MULTIMEDIA UNIVERSITY

STUDENT ID NO

MULTIMEDIA UNIVERSITY

FINAL EXAMINATION

TRIMESTER 2, 2016/2017

UEQ3622 – EQUITY & TRUSTS II

(All sections / Groups)

7 MARCH 2017

Reading Time : 2.30 p.m. – 2.45 p.m.
(15 Minutes)
Answering Time: 2.45 p.m. – 5.45 p.m.
(3 Hours)

INSTRUCTIONS TO STUDENTS

1. Students will have **fifteen minutes** during which they may read the paper and make rough notes ONLY in their question paper. Students then have the remaining **THREE HOURS** in which to answer the questions.

2. This Question paper consists of 3 pages with 4 Questions only.

3. Attempt **THREE** out of FOUR questions. **QUESTION 1 is COMPULSORY.**

4. Students are allowed to bring into Examination Hall CLEAN and ORIGINAL copy of:
   i. Trustee Act 1949 (Act 208); and
   ii. Specific Relief Act 1950 (Act 137)

   Students are not allowed to lend or borrow statute(s) during the Examination.

5. Please write all your answers in the Answer Booklet provided.

QUESTION 1

The Lai family trust was settled by John Lai on 2 October 2016. On 3 October 2016, John abandoned his suburban existence and set out to circumnavigate the world in a small yacht. The trust instrument appoints John's nephews, Callen, Derrick and Grissom as trustees. The beneficiaries are John's infant children Junior (15 years) and Jane (13 years).

The trust deed prescribes that there shall be a minimum of three trustees, and the trustees are directed to apply the income of the trust, at their discretion, for the proper education of the settlor's children until they reach the age of 21 years.

Callen is 23 years of age and has just been declared bankrupt. Upon discovering his appointment as trustee, he immediately invests some of the trust funds in Sunshine shares and an interest-bearing deposit at the Tiger bank.

Derrick is 18 years old and has no interest in acting as trustee, although he is fond of Junior and Jane and wants to help them out. Grissom is 17 years old and will do whatever his mother tells him.

Derrick brings Junior and Jane to you for advice. He also brings a copy of the trust instrument which appears to have been signed by Callen and Grissom. Derrick also informs you that the Tiger bank is in serious financial difficulty.

(a) Advise the beneficiaries on the appointment of trustees.

(20 marks)

(b) If Callen is not a bankrupt, can the beneficiaries sue him for breach of trust?

(20 marks)

(Total marks: 40 marks)

Continued...

Part B

Choose TWO (2) questions ONLY.

QUESTION 2

If by mistake a written instrument does not accord with the true agreement between the parties, equity has the power to reform, or rectify that instrument so as to make it in accordance with the true agreement. What is rectified is not a mistake in the transaction itself, but a mistake in the way in which that transaction has been expressed in writing.

The statement above is an extract from Snell's Equity with regards to rectification, an equitable remedy. Based on decided cases and statutory provisions explain this remedy and its raison d'être.

(Total marks: 30 Marks)

QUESTION 3

(a) *American Cyanamid Co v Ethicon Ltd* is a landmark case on the matter of interlocutory injunctions. There are four factors involved in a successful application for this injunction; a good arguable case, balance of convenience, special factor and relative strength of each party's case.

Based on decided cases and statutory provisions explain when injunctions cannot be granted.

(20 marks)

(b) Ingram Gold Investment Sdn Bhd is a local investment company that promises to provide its investors with a lucrative return. Dayang and her friend Nurfaizah had each invested their life's savings in the company. Recently, they discovered in a newspaper article that countless others had invested in the said company and had not received any returns for the two past years. The article further stated that the investment company was the *modus operandi* for a scam run by one Amadio Ingram, a British national. Dayang and her friend have decided to take legal action against Ingram to recover their investment. However, they have watched many movies and television shows in which rich people get away with embezzling money and other financial crimes by use of "off shore accounts".

As their advocate, what course of action would you take to ensure that when Ingram is brought to justice, Dayang and her friend will be able to recover their money? (10 Marks)

(Total marks: 30 marks)

Continued...

QUESTION 4

(a) 'Tracing is thus neither a claim nor a remedy. It is merely the process by which a claimant demonstrates what has happened to his property, identifies its proceeds and the persons who have handled or received them and justifies his claim that the proceeds can properly be regarded as representing his property.'

As per Lord Millet in Foskett v McKeown [2003] 3 All ER 97 at 120.

What must a plaintiff prove to establish a right to trace in equity?

(15 marks)

(b) Adam is a beneficiary in a trust deed settled by his late father, 10 years ago when he was just 10 years old. The trustee, Christina, needs to hold the trust property, until Adam reaches 21 years old. In the trust deed, there is a clause stating the following:

> "Where a beneficiary is a sui juris and absolutely entitled, he or she may legitimately decide to bring the trust to an end."

Adam wishes to end the trust.

Advise Christina.

(15 marks)

(Total marks: 30 marks)

End of page.